

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

**In Re:**

**Settlement Facility Dow Corning Trust,**

**Case No. 12-10314**

**Danielle McCarthy,**

**Claimant/Appellant.**

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**ORDER GRANTING MOTION TO DISMISS APPEAL  
and  
ORDER DISMISSING APPEAL**

A letter Appeal from the Appeals' Judge decision was filed on January 23, 2012 by Jennifer Williams on behalf of her deceased mother, Danielle McCarthy. On February 29, 2012, Dow Corning Corporation ("Dow Corning") filed a Motion to Dismiss the Appeal. Williams submitted various documents in opposition to the Motion to Dismiss and in support of the appeal.

An Amended Joint Plan of Reorganization ("Plan") in the Dow Corning bankruptcy action was entered by the Bankruptcy Court. Section 8.7 of the Plan states that this Court retains jurisdiction to resolve controversies and disputes regarding the interpretation and implementation of the Plan and the Plan Documents, including the Settlement Facility and Fund Distribution Agreement ("SFA"), and, to enter orders regarding the Plan and Plan Documents. (Plan, §§ 8.7.3, 8.7.4, 8.7.5) The Plan provides for the establishment of the SF-DCT, which is governed by the SFA. (Plan, § 1.131) The SF-DCT was established to resolve Settling Personal Injury Claims in accordance with the Plan. (Plan, § 2.01) The SFA and Annex A to the SFA establish the exclusive criteria by which such claims are evaluated, liquidated, allowed and paid. (SFA, § 5.01) Resolution of the claims is set forth under the SFA and corresponding claims resolution procedures in Annex

A. (SFA, § 4.01)

The Plan establishes administrative claim review and appeals processes for Settling Personal Injury claimants. Any claimant who does not agree with the decision of the SF-DCT may seek review of the claim through the error correction and appeal process. (SFA, Annex A, Art. 8) A claimant may thereafter obtain review by the Appeals Judge. (SFA, Annex A, Art. 8) The Plan provides that “[t]he decision of the Appeals Judge will be final and binding on the Claimant.” (SFA, Annex A, § 8.05) Claimants who seek review under the Individual Review Process also have a right to appeal directly to the Appeals Judge. The Plan provides that “[t]he decision of the Appeals Judge is final and binding on both Reorganized Dow Corning and the claimant.” (SFA, Annex A, § 6.02(vi))

Generally, the provisions of a confirmed plan bind the debtor and any creditor. 11 U.S.C. § 1141(a). Section 1127(b) is the sole means for modification of a confirmed plan which provides that the proponent of a plan or the reorganized debtor may modify such plan at any time after confirmation of such plan and before substantial consummation of the plan. 11 U.S.C. § 1127(b). “In interpreting a confirmed plan courts use contract principles, since the plan is effectively a new contract between the debtor and its creditors.” *In re Dow Corning Corporation*, 456 F.3d 668, 676 (6th Cir. 2006); 11 U.S.C. § 1141(a). “An agreed order, like a consent decree, is in the nature of a contract, and the interpretation of its terms presents a question of contract interpretation.” *City of Covington v. Covington Landing, Ltd. P’ship*, 71 F.3d 1221, 1227 (6th Cir. 1995). A court construing an order consistent with the parties’ agreement does not exceed its power. *Id.* at 1228.

The Plan’s language is clear and unambiguous that the decision of the Appeals Judge is final and binding on the claimants and the Reorganized Dow Corning. The Plan provides no right of

appeal to the Court.

Accordingly,

IT IS ORDERED that the Motion to Dismiss the Appeal [No. 2, filed 2/29/2012] is GRANTED.

IT IS FURTHER ORDERED that this action is DISMISSED with prejudice.

/s/ Denise Page Hood  
DENISE PAGE HOOD  
United States District Judge

DATED: September 28, 2012

**CERTIFICATE OF SERVICE/MAILING**

I certify that a copy of this document was served on this date electronically or by ordinary mail to all parties in interest.

Date: September 28, 2012

/s/ Sarah Schoenherr  
Deputy Clerk (313) 234-5090